



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 33402128

Date: AUG. 29, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a business executive in the pomegranate industry, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that he meets the initial evidence requirements for this classification, either through his receipt of a major internationally recognized award or by satisfying at least three of the ten evidentiary criteria set forth in the regulations. The Director further determined the Petitioner did not establish that his entry to the United States would offer substantial prospective benefits to the country. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country in the future.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can submit evidence of a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide documentation establishing that they meet at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner demonstrates that they meet these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Viscinscaia v. Beers*, 4 F.Supp 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner claims eligibility for classification as an individual of extraordinary ability based on his expertise “in the business of growing pomegranates.” The record reflects that he has founded or co-founded two commercial entities and an association in the pomegranate growing industry in his native country of Azerbaijan. In an affidavit submitted in support of the petition, the Petitioner states that he plans to continue his work in this field in the United States. Specifically, he indicates his intent to establish a pomegranate growing and breeding company, to import pomegranates and pomegranate products from Azerbaijan, and to consult with other pomegranate growers on industry best practices.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director determined that the Petitioner submitted evidence related to four of the regulatory criteria, including lesser nationally or internationally recognized awards or prizes, published material in professional publications or major media, original contributions of major significance in his field, and leading or critical roles for organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), (v) and (viii). The Director concluded that the Petitioner did not demonstrate that he meets any of these four criteria or establish his eligibility through comparable evidence under 8 C.F.R. § 204.5(h)(4).

The Petitioner also submitted evidence intended to demonstrate that he has earned a high salary in relation to others in his field, under 8 C.F.R. § 204.5(h)(3)(ix), but the Director declined to consider this claim. The Director noted that the Petitioner claimed eligibility under this criterion for the first time when responding to a request for evidence (RFE) and concluded that his claim represented a “material change” to the petition, emphasizing that the Petitioner must establishing eligibility at the time of filing.

Although the Petitioner submits a brief in support of the appeal, he does not address or contest the Director's determination that he did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), relating to his receipt of lesser nationally or internationally recognized awards or prizes for excellence in his field, nor does he address the Director's determination that he could not establish eligibility through "comparable evidence" under 8 C.F.R. § 204.5(h)(4). An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

In his brief, the Petitioner asserts that the Director overlooked or mischaracterized evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(iii), (v) and (viii), and improperly declined to consider his claim that he meets the "high salary" criterion under 8 C.F.R. § 204.5(h)(3)(ix).

For the reasons discussed below, we conclude the Petitioner has not established that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

#### 1. Published Materials

To meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), a petition must include "published material about the person in professional or major trade publications or other major media relating to the person's work in the field for which classification is sought." Any evidence submitted in support of this criterion "must include the title, date and author of the material and any necessary translation."

Evidence may include documentation such as print or online newspaper or magazine articles, popular or academic journal articles, books, textbooks or similar publications, or a transcription of professional or major audio or video coverage of the person and the person's work. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual> (discussing how USCIS evaluates initial evidence of extraordinary ability under the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

Here, the Petitioner submitted evidence related to several television appearances as well as one print article that appeared in *Business Life*, a magazine published in Azerbaijan. The Director determined that the evidence did not establish eligibility under this criterion, noting that the Petitioner did not provide transcripts of his television appearances. Further, with respect to the article in *Business Life*, the Director noted that the Petitioner did not provide evidence to establish that this source qualifies as a professional or major trade publication or other major media.

On appeal, the Petitioner emphasizes that he did in fact provide transcripts for his television appearances in response to the RFE. He resubmits this evidence on appeal and asserts that he submitted sufficient documentation to satisfy this criterion.

While the record supports the Petitioner's assertion that the Director overlooked his submission of transcripts for his televised media appearances, we conclude that he did not demonstrate his eligibility under 8 C.F.R. § 204.5(h)(3)(iii).

First, with respect to the printed article in *Business Life*, the Petitioner provided sufficient evidence to demonstrate the name and date of the publication. The evidence shows that this magazine is published by the Azerbaijani Entrepreneurs Confederation and may qualify as a professional or trade publication.

However, as noted by the Director in the RFE, the Petitioner did not submit a legible foreign language copy of the article to accompany the two-sentence English translation. The Petitioner's response to the RFE did not correct this deficiency.

Based on the translation provided, it appears this special [ ] issue of the magazine included a section with congratulatory comments from members of the business community, including a brief statement from the Petitioner, who wrote, in part, "I take this opportunity to congratulate the entrepreneurs on their professional holiday and wish them success in their work." The provided excerpt from *Business Life* includes the Petitioner's photograph, and according to the translation, identifies him as executive director of the [ ]

[ ] However, the published material appears to have been written by the Petitioner; the record does not establish that it is published material about him that relates to his work in his field.

To document his television appearances, the Petitioner initially submitted six screenshots from what appeared to be six separate videos. A translation identified the source of one image as "Russia 1 News." One of the still images has an "AzTV" logo, and two images appear to have been captured from the website [www.Bandicam.com](http://www.Bandicam.com). However, the Petitioner did not provide the dates of the appearances, sufficiently identify and document the source of the videos (including the name of the broadcasters), or include transcriptions of the televised or online media appearances.

In the RFE, the Director requested transcripts of the televised appearances and informed the Petitioner of his burden to provide documentary evidence of the materials' publication, the title and date of the publication, certified English translations, and evidence to demonstrate that the materials were published in major media or other qualifying media.

In response, the Petitioner submitted the requested transcripts of the TV coverage, and indicated in a cover letter that he had one appearance on Russian television, four appearances on "Azeri TV," and one video posted on the website of the Head of the Kurdamir Region in Azerbaijan. The Petitioner also submitted a self-prepared document labeled as "Information re: TV stations."

While the transcripts demonstrate that at least some of the televised appearances were about the Petitioner and related to his work in his field, the record does not include the required information regarding the dates of these appearances, nor does it sufficiently identify the name of the broadcaster for several appearances. As noted, the initial evidence identified the source of one video as "Russia 1 News" and another as "AzTV." The Petitioner re-submitted the same screenshots with handwritten notations indicating one appearance was aired by "CBC" and another by "ARB," but he submitted no further evidence to corroborate where or when these videos were broadcast.

Further, the Petitioner did not provide adequate support for his claim that the materials appeared in major media or another qualifying type of media. In evaluating whether a submitted publication is a professional publication, major trade publication or other major media, relevant factors include the intended audience (for professional and major trade publications), and the relative circulation, readership or viewership (for major trade publications and other major media). The Petitioner did not provide evidence that allows for an evaluation of these factors.

The document labeled “Information re: TV stations,” contains one-sentence descriptions of the television channels “Russia-1,” “AzTV,” “CBC,” “Lider TV,” and “ARB.” It does not include information regarding the relative viewership of these channels in support of the Petitioner’s claim that they qualify as “major media” in Russia or Azerbaijan.

Therefore, for the reasons discussed, the Petitioner has not demonstrated that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

## 2. High Salary

As noted, the Petitioner contends on appeal that the Director erroneously declined to consider evidence that he has commanded a high salary in relation to others in his field, under 8 C.F.R. § 204.5(h)(3)(ix). The Director correctly noted that the Petitioner did not claim to meet this criterion at the time of filing. They did not consider the evidence related to this criterion, which the Petitioner submitted in response to the RFE, *citing to Matter of Izummi*, 21 I&N Dec. 169 (Assoc. Comm’r 1998) and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971) to stand for the proposition that “a petitioner must establish eligibility at the time of filing” and a petition “cannot be approved at a future date after the petitioner becomes eligible under a new set of facts.”

The evidence the Petitioner submitted in response to the RFE relates to the salary he earned in the years 2019 to 2021 and therefore did not represent a “new set of facts” that did not exist at the time of filing in May 2022. The Petitioner explained that he did not claim eligibility under this criterion at the time of filing because he did not yet have the comparative salary data needed to support his claim. We agree with his contention that the Director was not prohibited from considering evidence relating to 8 C.F.R. § 204.5(h)(3)(ix) simply because he submitted it in response to the RFE. We will consider the Petitioner’s evidence below.

Evidence relevant to demonstrating high remuneration may include, but is not limited to tax returns, pay statements, or other evidence of past salary or remuneration for services, along with comparative wage or remuneration data for the person’s field, such as geographical and position-appropriate compensation surveys. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

In a memorandum accompanying the RFE response, the Petitioner stated he “enjoyed a much higher salary in the agrarian industry in Azerbaijan” between September 2019 and July 2021. He submitted an “extract from the Ministry of Taxes of Azerbaijan.” This document, titled “Labor Agreement Notification on making changes to Labor Agreement,” indicates that as of September 2019, the Petitioner’s monthly salary for services rendered to the entity [REDACTED] Production Cooperative as its “director, enterprise” was 6133.90 manat. The document indicates that this salary remained in effect as of July 2021.

The Petitioner also submitted a letter from the State Statistical Committee of the Republic of Azerbaijan, which provides data regarding the “average monthly nominal salary of salaried employees in the field of ‘Agriculture, Forestry and Fishing.’” The average monthly salary listed is 371.4 manat for 2019 and 433.5 manat for 2020.

The Petitioner did not provide a justification for comparing his salary as the director and chief executive of a commercial enterprise in the agribusiness industry to the average monthly salary of all persons working in “agriculture, forestry and fishing” in Azerbaijan. When evaluating whether a comparison between a petitioner’s documented remuneration and the remuneration in a salary survey or other source is accurate, USCIS may consider the scope of the surveyed occupations. Salary data that includes multiple occupations or multiple industries may not provide an accurate comparison to others in the field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The Petitioner did not offer any comparative data for managerial or executive positions in his field or industry. Without this evidence, he has not supported his claim that he commanded a high salary in relation to others in the field.

Accordingly, we conclude the record does not demonstrate that the Petitioner meets the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

## B. Summary and Reserved Issues

The record does not establish that the Petitioner meets either of the two evidentiary criteria discussed above. Because the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), detailed discussion of the two remaining contested criteria at 8 C.F.R. § 204.5(h)(3)(v) and (viii) cannot change the outcome of the appeal. Similarly, because the Petitioner does not meet the initial evidence requirements, it is not necessary to determine whether the Petitioner’s entry to the United States would offer substantial prospective benefits to the country under section 203(b)(1)(A)(iii) of the Act. Therefore, we reserve and will not address these remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576-77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

## III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten regulatory criteria as required under 8 C.F.R. § 204.5(h)(3). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered sustained national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.